1938. K File No. O. Manoeuvres/42

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LEGAL DEPARTMENT
A BRANCH

Subject:—

Opinions under the Manoeuvres, Field Firing and Artillery Practice Act, 1938 (Act V of 1938)

P-4

File No. O · Manoeuvres/42

Ftd. Scott. Slip. 21 A

281-A

CONTENTS.

Legal Department Volume No. O. Manoeuvres/ 1942.

Sr. No.	Compilation No.	Subject.	Pages.
		Opinions under the Manoeuvres, Field Firing and Artillery Practice Act, 1938 (Act V of 1938).	
1.	R.I.No.3308, dt. 7-4-42. O.No.3279, dt. 16-4-42.	Field Firing and Artillery Practice Act, 1938. Section 8(h) 'Notified area' as defined in the section-- Procedure for issuing a notification declaring the area for practising Firing.	1-4.

MRP.
27/4/56.

DPP
28-4-56.
SVR
28/4

As this is a matter relating to the Manoeuvres, Field Firing and Artillery Practice Act, 1938 A branch may please note on the same. The matter may be treated as very urgent.

Sd. B.G.Desai
6-4-42.

A branch.

R.I.No.3308
7-4-42.

Submitted.

2. The Collector of Ahmedabad had proposed that certain areas in the Ahmedabad District should be notified as areas for carrying out field firing and artillery practice Please see section 9 of the Manoeuvres, Field Firing Artillery Practice Act, 1938 (Act V of 1938). Under sub-section (1) of that section the Provincial Government can define any areas as areas within which for a specific term of years the carrying out periodically of field firing and artillery practice may be authorised. Sub-section (2) empowers the Provincial Government by notification to authorise the carrying out of field firing and artillery practice throughout a notified area or any specified part thereof during any period or periods specified. Sub-section (3) provides that before any notification under sub-section (2) is issued, the Provincial Government shall publish notice of its intention to issue such notification as

early as possible in advance of the issue of the notification, and no such notification shall be issued until the expiry of two months from the date of the first publication of the notice in the local official Gazette. In this case the R.D. has first published a notice under sub-sec.(3) in the B.G.G. d/- 4-12-1941 and now proposes to issue a notfn. under sub-section (1) of sec.9. The Secy. H.D. observes in this connection that a notification under sub-section (1) should be published first, then the notice under sub-section (3) and lastly, the notfn. under sub-section (2). He considers however that if the notfn. under sub-section (1) is published now the notice under sub-sec.(3) would not be invalidated. The R.L.A. is requested to advise whether the view expressed by Secy. H.D. is correct.

2. x x x x

MRP. -
27/4/56.

Office of the R.L.A.

"Notified area" as defined in section 8(b) of the Manoeuvres, Field Firing and Artillery Practice Act, 1938 means an area defined in a notification issued under sub-section (1) of section 9. Sub-section (1) provides that the Provincial Government may by notification in the local official Gazette, define any area as an area within which for a specified term of years the carrying out periodically of field firing and artillery practice may be authorised. Under sub-section (2) of the Provincial Government may, by notification in the official Gazette, authorise the carrying out of field firing or artillery practice throughout a notified area. Sub-section (3) enacts that before any notification under sub-section (2) is issued, the Provincial Government shall publish notice of its intention to issue such notification as early as possible in advance of the issue of the notification and no such notification shall be issued until the expiry of two months from the date of the first publication of the notice in the local official Gazette. Sub-section (4) provides for giving notice under sub-section (3) by publication in the local official Gazette and by publication in some newspaper circulating in and in the language commonly understood in that notified area and by beat of drum and by affixation in all prominent places of copies of the said notice etc. If these provisions are read together it will be clear that a notification under sub-section (1) defining the notified area must first be issued, then a notice under sub-section (3) and lastly a notification under sub-section (2). A notice under sub-section (3) would not be valid if it is published before the issue of a notification under sub-section (1)

for

for unless the notified area is defined by a notification under sub-section (1) no notice issued under sub-section (3) could be validly given under sub-section (4). A notification under sub-section (1) must precede the publication of a notice under sub-section (3). The notice issued under sub-section (3) in the present case before publication of a notification under sub-section (1) is not, therefore, valid and it cannot now be validated by issuing a notification under sub-section (1). The view expressed by the Secretary, Home Department, at page 44 ante in this respect is not correct.

Sd. P.N.Moos
15/4
Remembrancer of Legal Affairs.

U.R.to R.D.,No.3279, dated the 16th April 1942.

DPP
25-4-56

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27/4/56.